

or readily accessible to the operator or passengers; or

(ii) An open container stored in the living quarters of a motor home or camper.

(4) For the purpose of paragraph (a)(3)(i) of this section, a utility compartment or glove compartment is deemed to be readily accessible to the operator and passengers of a vehicle.

(c) *Operating under the influence of alcohol, drugs, or controlled substances.* (1) Operating or being in actual physical control of a vehicle is prohibited while:

(i) Under the influence of alcohol, a drug or drugs, a controlled substance or controlled substances, or any combination thereof, to a degree that renders the operator incapable of safe operation; or

(ii) The alcohol concentration in the operator's blood or breath is 0.08 grams or more of alcohol per 100 milliliters of blood or 0.08 grams or more of alcohol per 210 liters of breath. Provided, however, that if State law that applies to operating a vehicle while under the influence of alcohol establishes more restrictive limits of alcohol concentration in the operator's blood or breath, those limits supersede the limits specified in this paragraph.

(2) The provisions of paragraph (c)(1) of this section shall also apply to an operator who is or has been legally entitled to use alcohol or another drug.

(3) *Tests.* (i) At the request or direction of an authorized person who has probable cause to believe that an operator of a vehicle within the Pentagon Reservation has violated a provision of paragraph (c)(1) of this section, the operator shall submit to one or more tests of the blood, breath, saliva, or urine for the purpose of determining blood alcohol, drug, and controlled substance content.

(ii) Refusal by an operator to submit to a test is prohibited and may result in detention and citation by an authorized person. Proof of refusal may be admissible in any related judicial proceeding.

(iii) Any test or tests for the presence of alcohol, drugs, and controlled substances shall be determined by and administered at the direction of an authorized person.

(iv) Any test shall be conducted by using accepted scientific methods and equipment of proven accuracy and reliability operated by personnel certified in its use.

(4) *Presumptive levels.* (i) The results of chemical or other quantitative tests are intended to supplement the elements of probable cause used as the basis for the arrest of an operator charged with a violation of this section. If the alcohol concentration in the operator's blood or breath at the time of the testing is less than the alcohol concentration specified in paragraph (c)(1)(ii) of this section, this fact does not give rise to any presumption that the operator is or is not under the influence of alcohol.

(ii) The provisions of paragraphs (c)(3) and (c)(4)(i) of this section are not intended to limit the introduction of any other competent evidence bearing upon the question of whether the operator, at the time of the alleged violation, was under the influence of alcohol, a drug or drugs, or a controlled substance or controlled substances, or any combination thereof.

[63 FR 32619, June 15, 1998, as amended at 63 FR 49003, Sept. 14, 1998]

§ 234.18 Enforcement of parking regulations.

Parking regulations for the Pentagon Reservation shall be enforced in accordance with Department of Defense Administrative Instruction Number 88² and State law; violating such provisions is prohibited. A vehicle parked in any location without authorization, or parked contrary to the directions of posted signs or markings, shall be subject to removal at the owner's risk and expense, in addition to any penalties imposed. The Department of Defense assumes no responsibility for the payment of any fees or costs related to such removal which may be charged to the owner of the vehicle by the towing organization. This section may be supplemented from time to time with the approval of the Director, Washington Headquarters Services, or his designee, by the issuance and posting of such parking directives as may be required,

²See footnote 1 to § 234.3(a).

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and when so issued and posted such directive shall have the same force and effect as if made a part hereof.

§ 234.19 Penalties and effect on other laws.

(a) Whoever shall be found guilty of willfully violating any rule or regulation enumerated in this part is subject to the penalties imposed by Federal law for the commission of a Class B misdemeanor offense.

(b) Whoever violates any rule or regulation enumerated in this part is liable to the United States for a civil penalty of not more than \$1,000.

(c) Nothing in this part shall be construed to abrogate any other Federal laws.

PART 235—SALE OR RENTAL OF SEXUALLY EXPLICIT MATERIAL ON DoD PROPERTY

Sec.

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AUTHORITY: 10 U.S.C. 2489a.

SOURCE: 64 FR 6218, Feb. 9, 1999, unless otherwise noted.

§ 235.1 Purpose.

This part implements 10 U.S.C. 2489a, consistent with DoD Directive 1330.9¹ by providing guidance about restrictions on the sale or rental of sexually explicit materials on property under the jurisdiction of the Department of Defense or by members of the Armed Forces or DoD civilian officers or employees, acting in their official capacities.

§ 235.2 Applicability and scope.

This part: (a) Applies to the Office of the Secretary of Defense, the Military Departments (including the Coast Guard when it is operating as a Service in the Navy), the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Inspector General of

the Department of Defense, the Defense Agencies, and the DoD Field Activities.

(b) Shall not confer rights on any person.

§ 235.3 Definitions.

Dominant theme. A theme of any material that is superior in power, influence, and importance to all other themes in the material combined.

Lascivious. Lewd and intended or designed to elicit a sexual response.

Material. An audio recording, a film or video recording, or a periodical with visual depictions, produced in any medium.

Property under the jurisdiction of the Department of Defense. Commissaries operated by the Defense Commissary Agency and facilities operated by the Army and Air Force Exchange Service, the Navy Exchange Service Command, the Marine Corps Exchanges, and U.S. Navy ships' stores (sometimes referred to collectively herein as "retail outlets"), excluding, for the purposes of this part, entities that are not instrumentalities of the United States.

Sexually explicit material. Material, the dominant theme of which is the depiction or description of nudity, including sexual or excretory activities or organs, in a lascivious way.

§ 235.4 Policy.

In implementing 10 U.S.C. 2489a, it is DoD policy that: (a) No sexually explicit material may be offered for sale or rental on property under the jurisdiction of the Department of Defense, and no member of the Armed Forces, or DoD civilian officer or employee, acting in his or her official capacity, shall offer for sale or rental any sexually explicit material.

(b) Material shall not be deemed sexually explicit because of any message or point of view expressed therein.

§ 235.5 Responsibilities.

(a) The Assistant Secretary of Defense for Force Management Policy, under the Under Secretary of Defense for Personnel and Readiness, shall:

(1) Monitor and, as to DoD resale activities under the Assistant Secretary's authority, direction and control, ensure compliance with this part;

¹Copies are available at <http://web7.osd.mil/corres.htm>.